IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.312 OF 1996

The State of Maharashtra)
(At the instance of Shri A.S. Kulkarni,)
Food Inspector.)) ... Appellant

Versus

Hansraj Astir Shah (vendor))
C/o. Arihanta Trading Co., Plot)
No.64, Pushpa Park, Daftari Road,)
Malad (East), Mumbai – 400 097.) ... Respondent

Mr. Y.S. Shinde, A.P.P. for the appellant-State.

Ms. Smita Mane, advocate appointed, for the respondent-accused.

CORAM : SMT. RANJANA DESAI, J.

DATED : 16TH OCTOBER, 2007.

ORAL JUDGEMENT:-

1. The respondent (original accused 1) was tried along with one Shamji R. Shah (original accused 2 – since deceased) in the Additional Chief Metropolitan Magistrate's 46th Court, Mazgaon,

Bombay, in Case No.127/S/1990 for the offences punishable under sections 7(i), 2(ia)(a), 2(ia)(m), 7(v) of the Prevention of Food Adulteration Act, 1954 (for short, “the said Act”) read with rule 50 of the Prevention of Food Adulteration Rules, 1950 and section 16 of the said Act. During the trial, accused 2 – Shamji Shah expired and, therefore, the trial abated as against him. By the impugned judgment and order, learned Magistrate acquitted accused 1 of the charges levelled against him. Hence, this appeal by the State of Maharashtra at the instance of A.S. Kulkarni, the Food Inspector. For convenience, I shall refer to the parties as per their description in the trial.

2. It is the case of the complainant PW-2 Kulkarni that accused 1 is the vendor whereas accused 2 is the proprietor of shop known as M/s. Shakti Dal Mills situate at Pushpa Park, Daftary Road, Plot No.64, Malad (East), Mumbai, (for convenience, “the said shop premises”). On 20/6/1990 at about 2.30 p.m. Food Inspector PW-2 Kulkarni visited the said shop premises of accused 2 along with PW-4 Mahendra Mehta, the panch witness. He found stock of 20

k.g. of chilli powder in a loose gunny bag. PW-2 Kulkarni purchased 600 gms. of chilli powder from accused 1. Accused 2 was not present at the material time. He paid cost of Rs.18/- to accused 1, who passed on the receipt. He then issued notice in Form No.VI and notice under section 14A of the said Act to accused 1. He divided 600 gms. of chilli powder into three equal parts each of 200 gms. According to him, he filled it into three empty clean and dry bottles. The bottles were corked. He prepared three labels which bore his signature and the signatures of the vendor and the pancha witness. According to him, the labels were affixed on the bottles. Each bottle was then wrapped by thick brown paper separately. The ends of paper were neatly folded and pasted by means of gum. Signatures of accused 1 and the panch witness were obtained on each part in such a manner that it covered paper slip and part of the wrapper. Then each part of the sample was tied with a strong twine horizontally crosswise. A memorandum to that effect was made on the spot, which is at Ex-P-20. Accused 1 passed one combined receipt, which is at Ex-P-21.

3. According to PW-2 Kulkarni, he sent one part of the sealed sample along with original Form No.VII and covering letter to the Public Analyst. He sent one copy of Form No.VII along with specimen seal impression and its covering letter in a sealed cover to Public Analyst, Public Health Laboratory, separately by hand delivery. He sent the remaining two parts of the sample along with two copies of Form No.VII and its covering letter in a sealed packet to Local Health Authority, Bombay. A clerk of the Local Health Authority passed the receipt on the back of the covering letter. He has produced the same which is at Ex-P-28.

4. According to the complainant PW-2 Kulkarni, he received Public Analyst' s report dated 10/7/1990, which is at Ex-P-30. The Public Analyst opined that the food articles were adulterated. Hence, PW-2 Kulkarni forwarded a proposal for sanction for prosecuting the accused. After applying for sanction, the complaint came to be filed alleging offences mentioned hereinabove.

5. As stated above, accused 2 expired during the pendency of the trial and, hence, the trial abated as against accused 2.

6. In support of his case, the complainant examined PW-1 Ravindra Gosavi, a clerk in the Local Health Authority's office. The complainant examined himself as PW-2. PW-3 Sayyed Waheedullah, the Joint Commissioner, FDA, Greater Bombay, was examined on the point of sanction. PW-4 Mahendra Mehta is a panch witness. He has, however, not supported the complainant. He has turned hostile. The complainant also examined PW-5 Ratnakar Balvalli, the Public Analyst.

7. The accused pleaded not guilty to the charge. He denied the complainant's case. According to him, he has committed no offence. After perusing the evidence on record, learned Magistrate acquitted the accused as aforesaid and, hence, this appeal.

8. I have heard Mr. Shinde, learned A.P.P. for the State in

support of the appeal. He submitted that the impugned order is perverse and, hence, deserves to be set aside. He submitted that learned Magistrate erred in holding that the required procedure is not followed by the complainant. He took me to the evidence of the witnesses and pointed out that each and every procedural step is taken by the complainant. He submitted that the required procedure is meticulously followed by the complainant. The samples were properly drawn in clean containers. There was proper sealing. He drew my attention to the evidence of PW-1 Ravindra Gosavi, the clerk in the Local Health Authority's office and pointed out that he has stated that he had received sealed packets containing samples. He particularly relied on the evidence of PW-2 Kulkarni and pointed out that the required procedure was followed. He submitted that therefore, it was wrong on the part of learned Magistrate to acquit the accused. Learned A.P.P. submitted that the impugned order is perverse and is liable to be set aside.

9. Ms. Mane, learned amicus curie for the accused, however,

submitted that the impugned judgment and order does not deserve to be set aside. She submitted that it is a well reasoned order and cannot be characterized as perverse. Learned counsel pointed out that the evidence on record clearly establishes that the samples were not drawn in clean bottles and, therefore, the Public Analyst' s report looses its significance. Learned counsel, therefore, urged that the appeal be dismissed.

10. It is well settled by the Supreme Court in ***State of Rajasthan v. Raja Ram (2003) 8 SCC 180*** that unless the judgment of the trial court is perverse, it cannot be interfered with in an appeal against acquittal. If the view taken by the trial court is a reasonably possible view, the order of acquittal cannot be interfered with because the presumption of innocence of the accused is further strengthened by acquittal and if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. An order of acquittal can be interfered with only when there are compelling and

substantial reasons for doing so. However, if the view taken by the trial court is a reasonably possible view, it should not be interfered with. In such a situation, it is not open for this court to substitute its own view in place of the trial court's view. It is, therefore, necessary to find out whether the trial court's judgment is perverse and deserves to be set aside. Needless to say that if the trial court's view is a reasonably possible view, this court will not interfere with it.

11. So far as the procedure is concerned, there is substance in the submission of learned A.P.P. that the evidence of PW-2 Kulkarni indicates that by and large all efforts were made to follow the procedure. However, there is one basic fault in the case of the complainant. Drawing of samples in a clean bottle is a very important step in cases where the persons are charged under the said Act. If the samples are not drawn in clean bottles then it is possible that alleged adulteration of samples would also be caused on account of unclean bottles. In this case, PW-2 Kulkarni has stated that he put chilli powder in equal quantity in the bottles and

he put cork on the bottles. Sampling, labelling and tying done by his assistant Mahtre under his supervision. He has further stated that Mahtre was not a Food Inspector. He has further admitted that he had not put his seal impression on the cork after closing the bottles. He has given a very damaging admission in the cross-examination. He has stated that the bottles provided by the office were empty and clean and, therefore, he had not cleaned them and nobody had cleaned the bottles before him. He has further reiterated that he had not put his seal impression on the cork of the bottles after closing the same. It is improper for a Food Inspector to depend on bottles supplied by the office without ascertaining whether they were cleaned or not. PW-2 Kulkarni has admitted that he did not clean these bottles and the bottles were not cleaned before him. According to him, sampling, labelling and tying was done by his assistant Mahtre under his supervision. It was incumbent upon the complainant to examine Mahtre. Mahtre is not examined. In this connection, PW-4 Mehta, the panch witness could have helped the complainant. However, the panch witness has turned hostile. Therefore, learned Magistrate is right when he

finds that there is no evidence on record to establish that the Food Inspector had used clean bottles for preserving the samples of chilli powder.

12. In my opinion, therefore, in the above circumstances, the reasoning of the learned Magistrate cannot be faulted. The view taken by learned Magistrate is a reasonably possible view, which cannot be interfered with in this appeal against acquittal. The appeal is dismissed.

[SMT. RANJANA DESAI, J.]